enness and cruelty, a nominal counsel fee having been allowed the wife in the first instance, final allowance to her of $2,500 counsel fees, though liberal, held not so excessive that the court would undertake to reduce the amount.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 755.]

Appeal from Circuit Court of City of Norfolk.

Suit for divorce by Florence M. Twohy against George J. Twohy. From decree for plaintiff, defendant appeals. Affirmed.

George Pilcher, of Norfolk, for appellant.

Wm. Leigh Williams and *J. T. Lawless,* both of Norfolk, for appellee.

JOHNSON *v.* HOFFMAN.

June 16, 1921.

[107 S. E. 645.]

1. Sales (§ 52 (7)*)—Evidence Held to Show Buyer Did Not Rely on Representation of Quality.—In an action against buyer of cattle who refused to receive them, evidence held to show that he did not rely on seller's representation of the quality of the cattle, but satisfied himself by examination.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 660.]

2. Sales (§ 87 (2)*)—Terms of Oral Contract Held to Exclude Cattle of Less Weight than 1,000 Pounds.—Evidence held to show that the terms of an oral contract for the sale of cattle weighing 1,000 to 1,200 pounds did not require the buyer to accept any cattle under the weight of 1,000 pounds.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 11.]

3. Sales (§ 71 (2)*)—Construction of Oral Contract Held to Exclude Cattle under the Weight of 1,000 Pounds.—Under the rule of law that a contract of sale is not regarded as performed by the seller except by delivery or tender of the exact quantity called for by the contract, a seller agreeing to deliver cattle weighing between 1,000 and 1,200 pounds could not deliver any cattle less than 1,000 pounds in weight, and it was immaterial, as affecting such right, that the average weight was above such figure.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 10.]

4. Contracts (§ 318*)—One Breaching Contract Has No Right of Action for Breach by Other Party.—Plaintiff has no right of action for damages for breach of contract where he himself has breached the contract.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 437.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Appeal and Error (§ 1175 (3)*)—Appellate Court Held Authorized to Enter Judgment, Dismissing Action.—Where on appeal from a judgment against a buyer of cattle it appeared that the seller had breached the contract in not delivering or tendering the quantity called for, and hence was not entitled to recover, the Supreme Court, in reversing the judgment, might, by virtue of Code 1919, § 6565, enter judgment of dismissal in favor of the buyer.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 476.]

Error to Circuit Court, Madison County.

Action by T. S. Hoffman against A. N. Johnson and James H. Fletcher. There was a judgment against defendant A. N. Johnson, and he brings error. Reversed and dismissed.

W. M. Fletcher, of Sperryville, and *Edwin H. Gibson* and *Grimsley & Miller,* all of Culpeper, for plaintiff in error.

Jno. S. Chapman, of Stanardsville, and *N. G. Payne,* of Madison, for defendant in error.

TAYLOR *v.* BINSWANGER & CO. et al.

June 29, 1921.

[107 S. E. 649.]

Master and Servant (§ 375 (2)*)—Injury While Going to Lunch Held Not Compensable.—Under Workmen's Compensation Act, § 2, cl. (d), providing for compensation for accidental injuries arising out of and in the course of the employment, an employee cannot recover for injuries by being struck by an automobile while riding his bicycle on his way home to lunch during the noon hour.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 694.]

Certified Question from Industrial Commission.

Proceeding under the Workmen's Compensation Act to recover compensation for injuries by Alvin Taylor, employee, opposed by Binswanger & Co., employer. Certified question by Industrial Commission. Question answered.

AMERICAN PEANUT CORPORATION *v.* NEWSOM SUPPLY CO. et al.

June 16, 1921.

[107 S. E. 650.]

1. Sales (§ 398*)—Instruction as to Shipment of Defective Peanuts Held Erroneous under the Evidence.—In an action by a buyer to re-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.